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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (NC)

**CORRECTED DECLARATION OF SARA
E. JENKINS IN SUPPORT OF
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S MOTIONS
IN LIMINE**

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Cisco’s Motion to File Under Seal Confidential information filed connection with Cisco’s Motions *in Limine*. I make this declaration in accordance with Civil Local Rule 79-5(d)(1)(A).

3. As Motions *In Limine*, Cisco’s Motions are non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, that the document is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), good cause exists to seal the documents identified in the Sealing Motion as containing Cisco’s confidential information, also set forth below, because the information sought to be sealed reflects confidential information that “give[s] [Cisco] an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt b):

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Cisco's Motion in Limine No. 1: Motion to Exclude Argument and Evidence in Support of Equitable Defenses	Highlighted Portions	Arista
Cisco's Motion in Limine No. 2: Motion to Exclude Evidence Related to "Industry Standard"	Highlighted Portions	Arista
Cisco's Motion in Limine No. 3: Motion to Exclude Untimely Disclosed Witnesses	Highlighted Portions	Arista
Cisco's Motion in Limine No. 4: Motion to Exclude Untimely Disclosed Non-Infringement Theory	Highlighted Portions	Arista
Cisco's Motion in Limine No. 5: Motion to Exclude Testimony of Terry Eger	Highlighted Portions	Arista
Exhibit 2 to the Declaration of Sara E. Jenkins in Support of Cisco's Motions in Limine ("Jenkins Declaration")	Entire	Arista
Exhibit 4 to the Jenkins Declaration	Entire	Arista
Exhibit 5 to the Jenkins Declaration	Entire	Arista Cisco Juniper Dell Hewlett Packard Enterprise

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Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Exhibit 7 to the Jenkins Declaration	Entire	Arista
Exhibit 8 to the Jenkins Declaration	Entire	Cisco Arista
Exhibit 9 to the Jenkins Declaration	Entire	Arista
Exhibit 10 to the Jenkins Declaration	Entire	Arista
Exhibit 11 to the Jenkins Declaration	Entire	Arista
Exhibit 14 to the Jenkins Declaration	Entire	Arista

5. Exhibit 5 is an excerpt from Arista's Supplemental Responses to Plaintiff Cisco Systems, Inc.'s First, Third, and Fourth Set of Interrogatories (Nos. 10-12, 13, 15-18, and 21), served on May 27, 2016. Exhibit 5 contains information that was designated as confidential under the protective order in this matter from both Cisco and Arista and third parties Juniper Networks, Dell, and Hewlett Packard Enterprise. Cisco supports the sealing of the following pages and lines: 137:10-138:11; 144:13-28; 145:26-146:13; 178:1-20; 188:20-189:7; 189:20-190:19; 191:23-193:1; 194:4-12; 198:9-200:2; 201:13-27. These portions of this exhibit contain confidential information about Cisco's product development and architecture, licenses, competitive intelligence, and litigation strategy. As such, these portions should be sealed. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (documents containing "information about [a party's] business performance, structure, and finances that could be used to gain unfair business advantage against them," are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014). Moreover, disclosing this information to Cisco's competitors would harm Cisco's business by,

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1 *inter alia*, allowing Cisco's competitors to learn of Cisco's strategies. This would "harm [Cisco's]
2 competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). (compelling
3 reasons exist to seal documents containing "highly sensitive information regarding [a party's]
4 product architecture and development.") Cisco also files this motion to seal to provide Arista and
5 third parties the opportunity to file a declaration pursuant to Civil Local Rule 79-5(e) regarding the
6 confidentiality of Exhibit 5.

7 **6.** Exhibit 8 is an excerpt of Cate Elsten's rebuttal expert report and contains
8 information that was designated by Cisco in this matter as "Highly Confidential – Attorneys' Eyes
9 Only" under the Protective Order. This exhibit contains confidential and sensitive business and
10 pricing information, confidential information about actual and prospective customers, as well as
11 confidential data related to Cisco's sales and revenue. Cisco maintains this information in strictest
12 confidence. Highly confidential Cisco information is intertwined throughout this exhibit.
13 Therefore, compelling reasons justify sealing the entirety of this exhibit. *See Schwartz v. Cook*,
14 No. 15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (discussing the harm
15 that could result by the dissemination of similar sensitive internal business information to
16 competitors). In addition, the Court has previously ordered the sealing of this document in its
17 entirety. Dkt. 521 at 6.

18 **7.** Cisco also files this motion to seal to provide Arista Networks, Inc. and third
19 parties the opportunity to file a declaration pursuant to Civil Local Rule 79-5(e) regarding the
20 confidentiality of the other documents identified in the chart above.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed in Redwood Shores,
3 California, on September 21, 2016.

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5 /s/ Sara E. Jenkins
6 Sara E. Jenkins
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CORRECTED DECLARATION OF SARA E. JENKINS IN SUPPORT OF
CISCO'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Sara E. Jenkins.

Dated: September 16, 2016

/s/ John M. Neukom
John M. Neukom